

## UPDATED INFORMATIVE DIGEST

Prior to 2004, there were essentially no requirements that an individual seeking to become a provider of services for a recipient of the In-Home Supportive Services (IHSS) Program was required to complete before the individual could be enrolled as a provider and receive payment for providing services.

Between 2004 and 2011, several bills were enacted by the Legislature which established specific enrollment requirements for IHSS providers.

Senate Bill (SB) 1104 (Chapter 229, of Statutes 2004) included a provision that prohibited an individual who, within the last 10 years, has been convicted of, or incarcerated following a conviction for: 1) fraud against a government health care or supportive services program, 2) specified abuse of a child (Penal Code [PC] section 273a[a]) or abuse of an elder or dependent adult (PC section 368), from receiving payment from the IHSS Program for providing services. Additionally, SB 1104 mandated that an individual seeking to become a provider for an IHSS recipient complete and sign, under penalty of perjury, a provider enrollment form which includes a statement declaring that he/she has not, in the last 10 years, been convicted of, or incarcerated following a conviction for, any of the exclusionary crimes.

Assembly Bill of the Fourth Extraordinary Session of 2009 (ABX4) 4 (Chapter 4, Statutes of 2009) mandated that the prospective provider submit the provider enrollment form to the county in person and present identification and allow it to be photocopied.

ABX4 19 (Chapter 17, Statutes of 2009) included additional requirements for individuals seeking to become IHSS providers, mandating a prospective provider: undergo a criminal background check conducted by the Department of Justice, attend a provider orientation, and sign a statement specifying that he/she agrees to comply with the program rules and requirements.

AB 1612 (Chapter 725, Statutes of 2010) expanded the list of crimes for which a conviction or incarceration following a conviction, within the last 10 years, disqualifies an individual from being an IHSS provider, to include: 1) a violent or serious felony crime, as specified in PC section 667.5(c) and PC section 1192.7(c), 2) felony offenses for which a person is required to register as a sex offender, pursuant to PC section 290(c) and 3) felony offenses for fraud against a public social services program, as defined in Welfare and Institutions Code sections 10980(c)(2) and (g)(2). AB 1612 also included a provision which permits an individual who has been found ineligible to be a provider on the basis of a conviction(s) for one of the crimes added by the legislation, but who otherwise meets all of the provider enrollment requirements, to provide services to a specific IHSS recipient(s) if such recipient(s) chooses to hire the individual as his/her provider, notwithstanding the criminal conviction(s), submits a request to the county for an individual waiver of the exclusion.

AB 876 (Chapter 73, Statutes of 2011) prohibited, an individual, except for a parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient or spouse or

registered domestic partner of a recipient, from signing his or her own individual waiver form as the recipient's authorized representative.

As authorized by the legislation, the provider enrollment requirements have been implemented through various All County Letters (ACLs) until regulations are adopted. These proposed regulations adopt sections in the Manual of Policies and Procedures to affirm the policy directives that implemented the provider enrollment requirements.

The Department anticipates that these proposed regulations will benefit program stakeholders by consolidating the rules relating to IHSS provider enrollment requirements, which have been released via multiple ACLs, into a single place, the Manual of Policies and Procedures. The provider enrollment requirements themselves promote safety and security of IHSS recipients while still allowing them to hire the provider of their choice by ensuring that the individuals seeking to become providers do not have a criminal background of disqualifying convictions, or if they do, recipients are made aware of the fact, and they may still elect to have these individuals as their providers in spite of it. Additionally, the provider enrollment requirements promote program integrity by ensuring that providers understand and agree to comply with program rules and regulations.

SB 878 (Chapter 679, Statutes of 2014) clarified that: the applicant provider attend the in person provider orientation after completion of the provider enrollment application, the applicable rules and requirements regarding wages and overtime pay are to be included in the orientation, all oral and written materials presented at the orientation must be translated into all languages spoken by a substantial number of the population served by the IHSS Program, and representatives of the recognized employee organizations in each county shall be permitted to make a thirty-minute presentation at the orientation.

The Department reviewed existing program regulations and determined that no other regulations address the requirements for becoming an IHSS provider. Thus, these proposed regulations are not only consistent and compatible with existing state regulations but also with the intent of the Legislature in enacting SB 1104, ABX4 4, ABX4 19, AB 1612, and AB 876.

These regulations were considered at the public hearing held on January 8, 2014, in Sacramento, California. Written testimony was received during the 45-day comment period from November 22, 2013 to January 8, 2014. As a result of the testimony received and upon further review of the regulations, clarifying amendments were made to the proposed regulations.

**The revised regulations were again considered at the public hearing held on February 4, 2015, in Sacramento, California. Written testimony was again received during the 45-day comment period from December 19, 2014 to February 4, 2015. As a result of the testimony received and upon further review of the regulations, further amendments were made to the proposed regulations, those amendments include:**

- **Section 30-776.411(h) is being amended to include a field for the applicant provider's email address in the enrollment form.**

- **Section 30-776.421(f) is being amended to specify that applicable rules and requirements regarding wages and compensation will be included in the orientation. This general language will accommodate any future change to wage and hour law which may be applicable to IHSS providers.**
- **Section 30-776.463(a)(1) is being adopted to specify that when an individual is providing services for recipients in more than one county, the originating county shall be responsible for providing enrollment documents to the other counties where the provider is providing services.**
- **The term "applicant" provider is being amended to "prospective" provider throughout these regulations for clarity and consistency.**
- **Other minor changes were made for clarity and consistency.**

**Pursuant to Government Code section 11346.8, a 15-day renote and complete text of modifications made to the regulations were made available to the public following the public hearing. The renote was from July 29 to August 12, 2015. Testimony was received on the renote, however, most of it was outside the scope of the renote and only nonsubstantive, clarifying changes were further made to the regulations.**